

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF,

5 vs.

6 STEVEN A. AVERY,

7 DEFENDANT.

JURY TRIAL

TRIAL - DAY 21

Case No. 05 CF 381

8 **DATE:** MARCH 12, 2007

9 **BEFORE:** Hon. Patrick L. Willis  
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ  
12 Special Prosecutor  
On behalf of the State of Wisconsin.

13 THOMAS J. FALLON  
14 Special Prosecutor  
On behalf of the State of Wisconsin.

15 NORMAN A. GAHN  
16 Special Prosecutor  
On behalf of the State of Wisconsin.

17 DEAN A. STRANG  
18 Attorney at Law  
On behalf of the Defendant.

19 JEROME F. BUTING  
20 Attorney at Law  
On behalf of the Defendant.

21 STEVEN A. AVERY  
22 Defendant  
Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter



1           done so knowingly and voluntarily. Mr. Strang, have  
2           you raised this issue with your client?

3                   ATTORNEY STRANG: I have raised it with  
4           Mr. Avery; that is, Mr. Buting and I both have,  
5           jointly, several times, probably beginning before  
6           trial and then during the trial.

7                   THE COURT: Thank you. You can move the  
8           microphone over to Mr. Avery then.

9                   Mr. Avery, do you understand that you  
10          have a constitutional right to testify in this  
11          case, if you wish?

12                   THE DEFENDANT: Yes, I do.

13                   THE COURT: And do you further understand  
14          that you have a constitutional right not to testify,  
15          if you wish?

16                   THE DEFENDANT: Yes, I do.

17                   THE COURT: Do you understand that the  
18          decision whether to testify or not is yours to make?

19                   THE DEFENDANT: Yes.

20                   THE COURT: That means, you can listen to  
21          your attorneys and listen to their advice, but,  
22          ultimately, it's your call; do you understand that?

23                   THE DEFENDANT: Yes, I do.

24                   THE COURT: Has anyone made any threats or  
25          promises to you to influence your decision?

1 THE DEFENDANT: No, they didn't.

2 THE COURT: Have you thoroughly discussed  
3 your decision with your attorneys?

4 THE DEFENDANT: Yes, I did.

5 THE COURT: And have you made a decision as  
6 to whether or not you wish to testify in this case?

7 THE DEFENDANT: Yes.

8 THE COURT: What is your decision?

9 THE DEFENDANT: My decision is, I'm an  
10 innocent man and there's no reason for me to  
11 testify. Everybody knows I'm innocent.

12 THE COURT: Okay. So you wish not to  
13 testify; is that correct?

14 THE DEFENDANT: Yes.

15 THE COURT: Thank you. You may be seated.

16 THE DEFENDANT: Thank you.

17 THE COURT: Mr. Strang and Mr. Buting, have  
18 each of you had sufficient opportunity to thoroughly  
19 discuss this case and the decision whether or not to  
20 testify with your client?

21 ATTORNEY BUTING: Yes, we both have.

22 THE COURT: And are each of you satisfied  
23 that he's making his decision not to testify  
24 knowingly, intelligently and voluntarily?

25 ATTORNEY BUTING: Yes.

1                   THE COURT: Very well, the Court finds that  
2                   Mr. Avery's decision not to testify in this case is  
3                   knowingly and voluntarily made. I'm satisfied he's  
4                   aware of his constitutional right to testify, if he  
5                   wishes. And he is knowingly and voluntarily  
6                   declining the right to exercise the right to  
7                   testify. Is there anything else that either party  
8                   wishes to address before we bring the jurors in?

9                   ATTORNEY STRANG: There is, from the  
10                  defense, your Honor. I cannot remember when, but  
11                  sometime earlier in this trial, we discussed the  
12                  issue of one of our juror's participation on an  
13                  earlier civil jury in which the witness here was a  
14                  party. I will not name the juror, but the juror is  
15                  known to the Court and to opposing counsel.

16                  We argued at the time, that although  
17                  this was uncharted territory, as a matter of case  
18                  law, that the juror having once passed on the  
19                  credibility of a witness here, and that witness'  
20                  role as a party in a prior civil lawsuit, we  
21                  thought would leave a strong enough impression on  
22                  a juror and enough commitment to conclusions  
23                  about credibility that there would be at least  
24                  objective bias, if not also subjective bias, and  
25                  reason to relieve the juror from further